

Calendar No. 826

110TH CONGRESS
2D SESSION**H. R. 5710**

IN THE SENATE OF THE UNITED STATES

JUNE 20 (legislative day, JUNE 19), 2008

Received; read twice and placed on the calendar

AN ACT

To authorize the Secretary of the Interior to provide financial assistance to the Eastern New Mexico Rural Water Authority for the planning, design, and construction of the Eastern New Mexico Rural Water System, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Eastern New Mexico
5 Rural Water System Authorization Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **AUTHORITY.**—The term “Authority” means
9 the Eastern New Mexico Rural Water Authority, an

1 entity formed under State law for the purposes of
2 planning, financing, developing, and operating the
3 System.

4 (2) ENGINEERING REPORT.—The term “engi-
5 neering report” means the report entitled “Eastern
6 New Mexico Rural Water System Preliminary Engi-
7 neering Report” and dated October 2006.

8 (3) PLAN.—The term “plan” means the oper-
9 ation, maintenance, and replacement plan required
10 by section 4(b).

11 (4) SECRETARY.—The term “Secretary” means
12 the Secretary of the Interior.

13 (5) STATE.—The term “State” means the State
14 of New Mexico.

15 (6) SYSTEM.—

16 (A) IN GENERAL.—The term “System”
17 means the Eastern New Mexico Rural Water
18 System, a water delivery project designed to de-
19 liver approximately 16,500 acre-feet of water
20 per year from the Ute Reservoir to the cities of
21 Clovis, Elida, Grady, Melrose, Portales, and
22 Texico and other locations in Curry, Roosevelt,
23 and Quay Counties in the State.

24 (B) INCLUSIONS.—The term “System” in-
25 cludes the major components and associated in-

1 frastructure identified as the “Best Technical
2 Alternative” in the engineering report.

3 (7) UTE RESERVOIR.—The term “Ute Res-
4 ervoir” means the impoundment of water created in
5 1962 by the construction of the Ute Dam on the Ca-
6 nadian River, located approximately 32 miles up-
7 stream of the border between New Mexico and
8 Texas.

9 **SEC. 3. EASTERN NEW MEXICO RURAL WATER SYSTEM.**

10 (a) FINANCIAL ASSISTANCE.—

11 (1) IN GENERAL.—The Secretary may provide
12 financial and technical assistance to the Authority to
13 assist in planning, designing, conducting related
14 preconstruction activities for, and constructing the
15 System.

16 (2) USE.—

17 (A) IN GENERAL.—Any financial assist-
18 ance provided under paragraph (1) shall be ob-
19 ligated and expended only in accordance with a
20 cooperative agreement entered into under sec-
21 tion 5(a)(2).

22 (B) LIMITATIONS.—Financial assistance
23 provided under paragraph (1) shall not be
24 used—

- 1 (i) for any activity that is inconsistent
2 with constructing the System; or
3 (ii) to plan or construct facilities used
4 to supply irrigation water for irrigated ag-
5 ricultural purposes.

6 (b) COST-SHARING REQUIREMENT.—

7 (1) IN GENERAL.—The Federal share of the
8 total cost of any activity or construction carried out
9 using amounts made available under this Act shall
10 be not more than 75 percent of the total cost of the
11 System.

12 (2) SYSTEM DEVELOPMENT COSTS.—For pur-
13 poses of paragraph (1), the total cost of the System
14 shall include any costs incurred by the Authority or
15 the State on or after October 1, 2003, for the devel-
16 opment of the System.

17 (c) LIMITATION.—No amounts made available under
18 this Act may be used for the construction of the System
19 until—

- 20 (1) a plan is developed under section 4(b); and
21 (2) the Secretary and the Authority have com-
22 plied with any requirements of the National Envi-
23 ronmental Policy Act of 1969 (42 U.S.C. 4321 et
24 seq.) applicable to the System.

1 (d) TITLE TO PROJECT WORKS.—Title to the infra-
2 structure of the System shall be held by the Authority or
3 as may otherwise be specified under State law.

4 **SEC. 4. OPERATION, MAINTENANCE, AND REPLACEMENT**
5 **COSTS.**

6 (a) IN GENERAL.—The Authority shall be responsible
7 for the annual operation, maintenance, and replacement
8 costs associated with the System.

9 (b) OPERATION, MAINTENANCE, AND REPLACEMENT
10 PLAN.—The Authority, in consultation with the Secretary,
11 shall develop an operation, maintenance, and replacement
12 plan that establishes the rates and fees for beneficiaries
13 of the System in the amount necessary to ensure that the
14 System is properly maintained and capable of delivering
15 approximately 16,500 acre-feet of water per year.

16 **SEC. 5. ADMINISTRATIVE PROVISIONS.**

17 (a) COOPERATIVE AGREEMENTS.—

18 (1) IN GENERAL.—The Secretary may enter
19 into any contract, grant, cooperative agreement, or
20 other agreement that is necessary to carry out this
21 Act.

22 (2) COOPERATIVE AGREEMENT FOR PROVISION
23 OF FINANCIAL ASSISTANCE.—

24 (A) IN GENERAL.—The Secretary shall
25 enter into a cooperative agreement with the Au-

thority to provide financial assistance and any other assistance requested by the Authority for planning, design, related preconstruction activities, and construction of the System.

(B) REQUIREMENTS.—The cooperative agreement entered into under subparagraph (A) shall, at a minimum, specify the responsibilities of the Secretary and the Authority with respect to—

(i) ensuring that the cost-share requirements established by section 3(b) are met;

(ii) completing the planning and final design of the System;

(iii) any environmental and cultural resource compliance activities required for the System; and

(iv) the construction of the System.

(b) TECHNICAL ASSISTANCE.—At the request of the Authority, the Secretary may provide to the Authority any technical assistance that is necessary to assist the Authority in planning, designing, constructing, and operating the System.

(c) BIOLOGICAL ASSESSMENT.—The Secretary shall consult with the New Mexico Interstate Stream Commis-

1 sion and the Authority in preparing any biological assess-
 2 ment under the Endangered Species Act of 1973 (16
 3 U.S.C. 1531 et seq.) that may be required for planning
 4 and constructing the System.

5 (d) EFFECT.—Nothing in this Act—

6 (1) affects or preempts—

7 (A) State water law; or

8 (B) an interstate compact relating to the
 9 allocation of water; or

10 (2) confers on any non-Federal entity the abil-
 11 ity to exercise any Federal rights to—

12 (A) the water of a stream; or

13 (B) any groundwater resource.

14 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

15 (a) IN GENERAL.—In accordance with the adjust-
 16 ment carried out under subsection (b), there is authorized
 17 to be appropriated to the Secretary to carry out this Act
 18 an amount not greater than \$327,000,000.

19 (b) ADJUSTMENT.—The amount made available
 20 under subsection (a) shall be adjusted to reflect changes
 21 in construction costs occurring after January 1, 2007, as
 22 indicated by engineering cost indices applicable to the
 23 types of construction necessary to carry out this Act.

24 (c) NONREIMBURSABLE AMOUNTS.—Amounts made
 25 available to the Authority in accordance with the cost-

1 sharing requirement under section 3(b) shall be non-
2 reimbursable and nonreturnable to the United States.

3 (d) AVAILABILITY OF FUNDS.—At the end of each
4 fiscal year, any unexpended funds appropriated pursuant
5 to this Act shall be retained for use in future fiscal years
6 consistent with this Act.

Passed the House of Representatives June 19, 2008.

Attest: LORRAINE C. MILLER,
Clerk.

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